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HONOLULU, H. T., FRIDAY, MARCH 14, 1902—SEMI-WEEKLY.

WHOLE No. 2367.

HUMPHREYS FINDS SMITH GUILTY OF CONTEMPT

Gear at Once Imposes Sentence of Thirty Days Imprisonment as Punishment.

Writ of Habeas Corpus is Granted Later on by Chief Justice Frear and Editor Is Released.

WALTER G. SMITH, editor of the Pacific Commercial Advertiser, was adjudged guilty of contempt of court by Judge Humphreys yesterday, and by Judge Gear sentenced to thirty days' imprisonment at Oahu Prison. Judge Robinson also sat upon the bench, and according to Humphreys, concurred in the findings.

Mr. Smith was detained in the court room until after 3 o'clock in custody of a bailiff, then the long delayed mittimus was served and he was taken to the police station, where half an hour later he was released upon a writ of habeas corpus. The writ which was issued by Chief Justice Frear, was made returnable on the first day of the next session of the Supreme Court, which is Monday, April 21st, adjournment having been taken yesterday for the term.

The court room and corridors were crowded when court convened yesterday morning. The time for the return was fixed at 9 o'clock, but it was fifteen minutes later before the three judges marched into the room, Humphreys in the lead, and took seats upon the bench.

Judge Gear opened the ball, by asking if any return had been made. W. O. Smith, appearing for the respondent, replied that W. G. Smith was in court, ready to put in an appearance. Davis stated that he would like to introduce some evidence, when Mr. Smith said that he first wished to present a motion to discharge the rule which he read as follows:

MOTION TO DISCHARGE RULE TO SHOW CAUSE.

Now comes Walter G. Smith, the respondent in the above entitled contempt proceedings, and moves the court that the rule to show cause why the said respondent should not be punished for contempt herein, be discharged, upon the following grounds:

I—That the act complained of in the motion upon which said rule to show cause is based, is not, in law, a contempt of court for which the court has power to punish this respondent.

II—That this court cannot legally punish as for contempt a publication of the nature of that herein complained of, made in a newspaper and not done in the immediate presence of the court.

III—That the publication of a cartoon or picture, such as that complained of, done without knowledge by the person so publishing the same that a case pending before the court would or might be prejudiced thereby, or without knowledge that any such case was pending, is not a contempt of court, and cannot be punished as such.

IV—Under the statutes of the Territory of Hawaii, no publication out of court in relation to the court or to any of its members amounts to a contempt, and the same cannot be punished as such.

Honolulu, March 13, 1902.

WALTER G. SMITH, Respondent.

Davis here again asked for leave to introduce evidence, which Judge Gear refused to allow, stating that the motion was in the nature of a demurrer and must first be disposed of. He remarked further that the third paragraph was improper pleading, to which Mr. Smith assented. Judge Robinson then said that the court would give leave to amend by striking out that paragraph, which was accordingly done.

Judge Gear then announced: "With that part stricken out, we are all of the opinion that the motion will be denied."

Mr. Smith thereupon presented the return, reading as follows:

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT, TERRITORY OF HAWAII.

February Term, 1902.

Territory of Hawaii vs. William McCarthy, re Contempt of Walter G. Smith.

RETURN AND ANSWER OF WALTER G. SMITH.

Walter G. Smith, the respondent in the above entitled contempt proceedings, for return and answer to the citation and order herein, and to purge the contempt herein alleged, says:

I—That he is the editor of the newspaper called "The Pacific Commercial Advertiser," printed and published in Honolulu, in which was printed the

cartoon or picture referred to in the motion herein.

II—That at the time said cartoon or picture was published he did not know that the case of the Territory of Hawaii vs. William McCarthy, wherein the said McCarthy was charged with assault in the first degree, as alleged in said motion, was begun or was pending before the said Circuit Court or any other court.

III—That he knew that the said McCarthy had been tried in said Circuit Court upon a charge of "mayhem," and had been discharged by the court some days prior to the publication of said cartoon or picture, but did not know, nor had he been informed that another charge on the same state of facts had been entered against said McCarthy, and that the trial on said new charge had been begun or was pending.

IV—That said cartoon or picture related solely to said case of the Territory vs. William McCarthy, charged with "mayhem," which had been tried and determined, and was not published with intent to prejudice the jury or the public, or any one, respecting the merits of any case pending against said McCarthy, or to prevent or obstruct the administration of justice, or to show contempt of the Hon. George D. Gear, Judge of the Circuit Court, or of said court.

WALTER G. SMITH, Respondent.

At this point Judge Humphreys stepped in: "I notice in your answer," said he, "that you expressly refrain from disclaiming any intentional personal disrespect to presiding judge of this court. Is that intentional or inadvertent?"

Attorney Smith replied that it was intentional, and then inquired who was bearing the case, stating that he understood Judge Gear to be presiding. Judge Gear replied that all three judges were sitting together.

"As far as I am concerned, you will govern yourself accordingly," said Judge Humphreys.

"We have tried to treat the court with respect."

"The court demands such treatment as a right, and not as a privilege," said Humphreys, even more hotly.

"I treat the court with respect, and I demand the same treatment from the court," replied Mr. Smith, also with some show of anger.

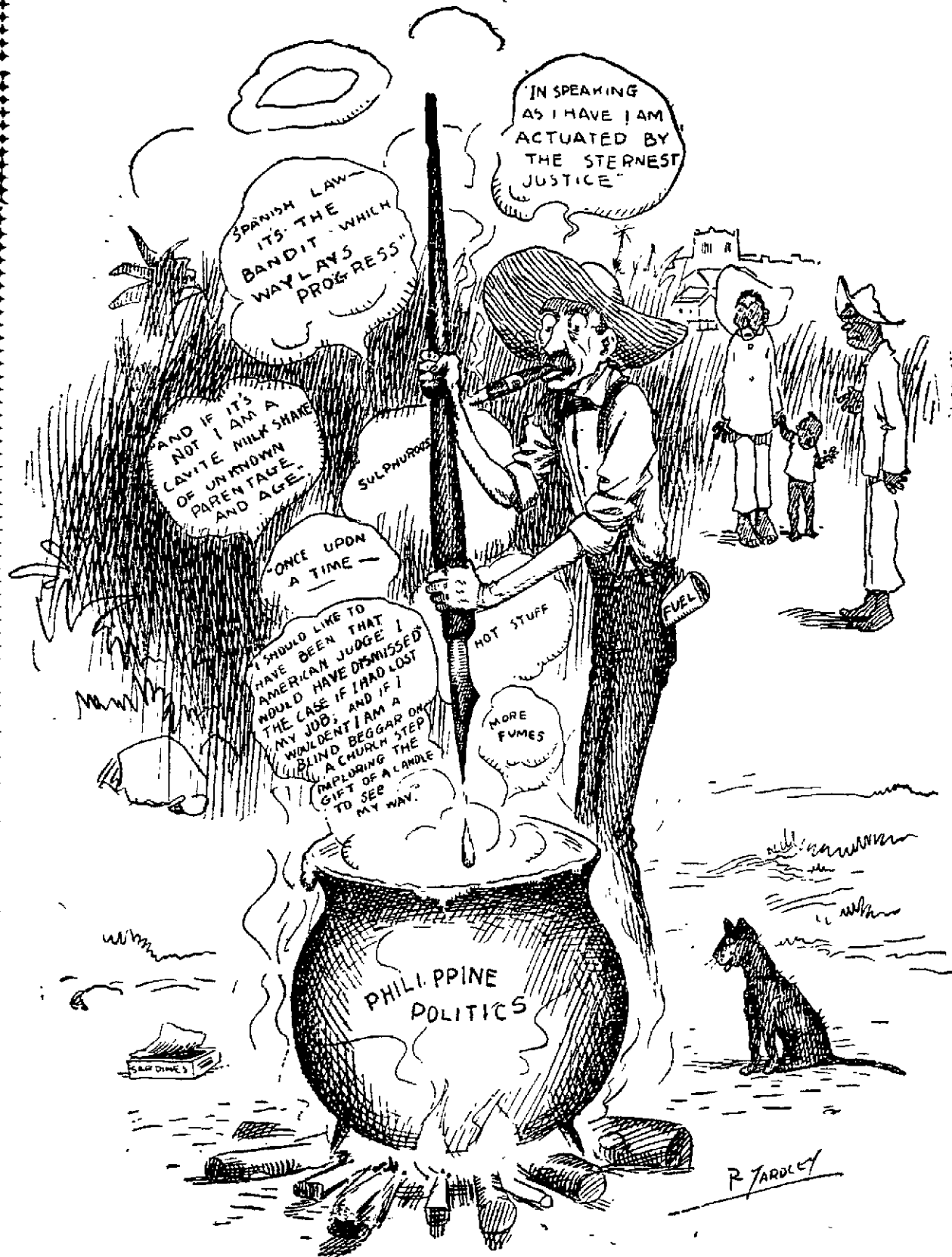
Then Davis began the introduction of his testimony, to prove the alleged contempt; and for that purpose called the jurymen who had been impaneled to hear the case. Eleven of them testified that they had read the Advertiser and saw the cartoon. Then Davis read the words under the cartoon, "Bless you, McSwilligan, bite her again," with such vicious emphasis that everyone in the court room laughed, excepting the first judge. There were several outbreaks of laughter in the audience at the remarks of the witnesses, and Gear joined in as heartily as anyone else. The jurymen all concurred in this testimony, and then Humphreys discovered an important omission, in that they failed to identify the subjects of the cartoon, and upon his advice Davis recalled the first three jurors to add these facts to the record.

The jurors all identified the cartoon as depicting Gear, but one of them, Cooley, didn't think the picture of McCarthy looked anything like McCarthy, but thought it was more like a monkey. Davis said: "I don't think there can be any misunderstanding as to this meaning the court, and that McSwilligan was meant for McCarthy, and referred to the woman he bit. I mean he is charged with biting," the attorney corrected the admission immediately.

Cooley also denied that he was a regularly and legally impaneled juror but said he had been brought in by main force and compelled to serve. Mr. Smith objected to some of the questions of Davis as leading, whereupon that attorney became quite wrathful, and asked the questions at the witnesses with a truly melodramatic turn at the defendant's attorneys.

The record of the first trial was next introduced in evidence, and Colonel Jones as official court reporter, was called to testify to the ruling made by the court upon the motion in arrest of judgment. Mr. Jones had not been in court at the time the decision was rendered, and Judge Gear stated that he would take judicial knowledge of the fact, that he had discharged McCarthy on the ground that there was no such crime as mayhem in the Hawaiian statutes.

THE VOLCANO AT WORK



During the interruption while Colonel Jones was looking for his record, Attorney Smith arose and asked leave to amend the return, to show that there was no intention of showing disrespect to Judge Gear, and this was allowed.

Humphreys then explained why he had raised the question in the first place. "It was my purpose in calling attention to this matter to show that the manifest tendency of the cartoon was to sway and influence the jurors by showing that the presiding judge was in league with these criminals, and that therefore the jurymen should take the bit into their own hands, without reference to the instructions or to the judge."

"That is all the evidence we have to offer," here remarked Davis.

"That is of the former trial," said Humphreys, who evidently expected further testimony. Davis made no reply.

Mr. W. O. Smith then announced that he had no evidence to offer, having refrained from cross-examining the witnesses put on the stand by Davis.

Mr. Davis then began his argument, quoting frequently from an Ohio decision in a contempt case. He said that the court was created by the Organic Act, and consequently was a constitutional court, and that the legislature not having created the court, could not limit its powers.

He contended further that the publication was actual contempt, not constructive, and was not a report of court proceedings. This was a violation of the sixth amendment to the constitution guaranteeing every man a speedy trial, and the cartoon had interfered with this right, and tended to bring the court into ridicule, and interfere with the proper administration of justice. He referred to the liberty of the press, granted by the constitution, but said that the right to a fair and impartial trial was more important, and this cartoon struck at the very fabric of our institutions. He referred also to his own case where he had been sentenced to prison for attacking the court in a bill of exceptions, and in which W. O. Smith, then attorney general, had prosecuted. The proper way to punish Judge Gear was by impeachment, said Davis, and an appeal to the President, and if he had done anything to justify it to call a meeting of the bar and prefer charges.

"Judge Gear has done the best he could under all the circumstances, and with a meager salary of but \$250 per month," said Davis. He stated that Gear had done nothing for which he should be labelled, and had no reason for wishing to free criminals, but that this cartoon had overstepped the bounds, had brought the editor into active contact with the court. He closed with a reference to the "disrespectful, libelous and scandalous cartoon," and said that W. G. Smith was the only responsible party, while behind him sat those who egged him on, in an attempt

to throw the community into disorder. The proper way to secure Gear's removal, he said, was through an appeal to the President. "I feel that the court ought to be treated with respect, whether I like the judge or not. If the court is not a proper party to sit upon the bench, charges should be preferred," continued Davis; "but it seems to me that his character has been pretty well sifted by the time, though he is not an angel." (Laughter.) Davis closed with a long harangue about his own professional honor, and how he had always treated the courts with respect, adding, by way of an afterpiece, a few shafts aimed at the attorney general.

Mr. A. Lewis followed with a brief argument, confined almost wholly to the legal aspect of the case. He said that they relied upon two simple propositions—that it was not within the power of the court to punish for constructive contempt, that the court was formed by the laws promulgated by the legislature of Hawaii, which laws had received the sanction of Congress, and that there can be no punishment for constructive contempt. The courts took their powers from the legislature, and certainly also must be limited by the same laws. He contended that the cartoon referred to the first McCarthy case, which was not pending, and there was no knowledge on the part of the respondent that the case was again on trial.

The case having been concluded and the decision rendered, there could be no contempt; and Mr. Lewis quoted from the decision in the famous "Chicago American" case, wherein Andy Lawrence had been sentenced for contempt and released. He quoted from the decision to show the freedom of the press, and the right to criticize the action of any judge, just as well as of the President or of the governor. This cartoon was entirely in reference to the first case, as alleged in the return, and the affidavit of Mr. Smith was uncontradicted.

The editor of a paper is presumed to know what appears in his paper," said Judge Gear. "Here in the same issue is a half-column article on the second trial of McCarthy."

"The court will take judicial knowledge of the fact that it is impossible to delegate the absolute control of everything that appears in the modern newspaper to one man," added Judge Humphreys, "and the editor disclaiming knowledge of the publication is no more censurable than would be the general manager of a railroad if one of its conductors assaulted a passenger a hundred miles down the road."

Mr. Lewis in conclusion said that the answer of Mr. Smith was conclusive, being uncontradicted, and if he did not believe the truth he was liable to indictment for perjury.

W. O. Smith said that as a member of the bar he wished to disclaim any intention of attacking the authority of

the court, or detracting from its powers, but that he did not believe the cartoon to be contempt, and that the remedy sought was not proper; but that the court was not without proper remedy, if it sought to exercise it. Humphreys interrupted to say that this was not constructive contempt.

Mr. Smith replied that the judges had the same remedy as did the President or governor, and that the court's authority to punish for contempt was limited in the Hawaiian statutes to offenses committed outside the court room, judges had no more protection than did other officials or citizens.

Judge Humphreys stated that the section of the Hawaiian statute referring to constructive contempt was null and void, and not being a law could not have been carried over and re-enacted by Congress. He said that the section was unconstitutional and consequently there could be no constructive contempt.

Mr. Lewis replied that it was a question of fact as to whether or not the law had been carried over constitutionally, and said that he knew of no decision to that effect.

Humphreys replied that being unconstitutional it was void at the time of its enactment.

Mr. Lewis did not believe a law could be declared unconstitutional except by some action on the part of a court.

Humphreys then said that there were no Circuit Courts at the time of this act, and it referred only to the Supreme Court or District Courts. This was a matter of history, and W. O. Smith replied that there had been Circuit Courts in Hawaii since 1859. The court appeared satisfied with the statement and sitting then began his argument. He referred to the cartoon as blasphemous and said that all the facts had been admitted. He said that questions of law were not involved in the case at all, and concluded by saying that it was actual and not constructive contempt. At this point the court took a recess for fifteen minutes. The court returned to the room in about twenty minutes. Judge Humphreys leading the way with an armful of law books, Humphreys began immediately upon his ruling. He said:

The affidavit filed in this case seems to set out pretty fully all the pertinent material and relevant facts. The charge of contempt whether it be held to be a direct or indirect contempt, a constructive contempt or a contempt committed in the face of the court, is charged technically in apt and proper words.

On behalf of respondent it is contended that this court is without the power which ordinarily inheres in all courts of record to protect themselves and to prevent the obstruction, embarrassment and hindrance of the due and orderly administration of justice. This contention is made under the act of

(Continued on Page 5.)

DESPERATE CONVICT ESCAPES

Woods, the Negro Life Term, Is at Large.

LEAVES GANG AT KEWALO QUARRY

Armed Posse Scours Country All Night Long—Stole a Cane Knife.

WOODS, the desperate negro sentenced last year to life imprisonment for breaking into the Spreckelsville store on Maui and decamping with the safe containing \$1000, escaped from the gang of convicts working in the Kewalo quarry, behind Punchbowl, yesterday afternoon, and at 2 o'clock this morning was still at large.

There were about 50 prisoners in the gang, with three guards. About 3:30 o'clock Woods asked to be allowed to get a drink of water, and permission being granted, proceeded to a small shed some distance from where he was working, in which the water was kept.

This seems to have been the last seen of him. After a while his absence was noticed, and the prisoners were taken back to Oahu Jail as quickly as possible, and a telephone message sent to the police station telling of Woods' escape. At once every available man was collected and Deputy Sheriff Chillingworth and a posse set out for the quarry.

Until sundown the country in all directions was scoured, but only one trace of the fugitive was found. Not far from the quarry is a small house, inhabited by an old native woman. Woods visited the place, and finding no one at home, broke into it and ransacked the premises. When the officers arrived at the house they found the floor covered with clothing. The tenant of the house said that a dress and a cane knife had been taken away.

All night long a score or more of armed officers were posted at different points in the neighborhood. Officers were also stationed all over town at resorts frequented by the colored population. When the collier Alexander departed she was carefully searched and men were also detailed to watch the transports Egbert and Warren.

The country in the quarry district is densely covered with lantana, which makes pursuit a matter of extreme difficulty.

Woods has escaped from custody once before. About six months ago, after being committed for trial, he was brought to Honolulu for safe keeping. One day he scaled the high wall of Oahu Jail and escaped into the lantana at Kalihi, where he was discovered in a pit and retaken at the point of a revolver.

After being sentenced to life imprisonment by Judge Kalua, he one day attacked the jailer at Wailuku Jail in a desperate attempt to escape, and had not assistance arrived in the nick of time, would have choked him to death.

During the first three months of his incarceration in Oahu Jail Woods wore a ball and chain which, as he behaved himself well, was taken off at the end of that time. It is thought by the police that his escape yesterday was the result of a plan in which some of his friends were concerned. If this is so, a horse may have been in waiting for him, and if Woods succeeded in making connections his capture will be that much more retarded. The fact that he took the cane knife from the woman's house, shows that he does not intend to be taken without a fight.

Woods is about twenty-eight years of age, 5 feet 10 inches tall, broad-shouldered and powerfully built, very black, and possessing an unusually high forehead.

ANOTHER MAN NOW MISSING

Half a dozen men of the crew of the transport Warren went to the police station last night and reported that one of their comrades named Conners had been missing for a week. They found that the description of the man found in the harbor on Sunday called by Conners. The sailors have reported missing man's vest in their possession, and the police will compare it with the dead man's suit this morning.

Says New Yorker Interfered Here.

[illegible]

It can be learned from that a bishop is not to be regarded as a bishop voluntarily resigning his office to look back from the position which he has put his hands upon. I have acted myself in three islands as a bishop in the United States, as a bishop in his diocese. An important educational institution has been founded after my arrival in 1877, and has been carried on on my own private property, which would have ultimately

[illegible]

**High Honor Is
Paid to the
Guest.**

Nonduin January 30 1902
To the Right Reverend T U Dudley
D D Bishop of Kentucky Chairman
of the House of Bishops

1057 FO

Manufacturers' Shoe Co., Limited
1057 FORT STREET.

THE QUEEN OWNS SAND

Titles Extend to Low Water Mark.

(From Wednesday's Daily.)

Neither the Territory nor the United States has title to the lands of Hawaii between high water and low water mark, if it had been conveyed to other parties by persons holding title prior to annexation, is the ruling of the Supreme Court in the case of Territory vs. Liliuokalani and John H. Wilson, as decided yesterday. The points decided are of much interest, in that there are similar cases afloat.

The Circuit Court, Judge Humphreys, is reversed, the opinion having been written by Judge Gear, acting Justice, and concurred in by Justice Galbraith. Justice Perry was also disqualified, and his place had been filled by Thomas Fitch, who also filed a separate concurring opinion, in which he went into the question more fully.

The case at point involved the right of John H. Wilson, who held certain lands at Waikiki, by leases from the ex-queen, to remove sand at low water point. Judge Humphreys sustained the attorney general, overruling a demurrer, and granting an injunction restraining the removal of the sand. His decision is reversed by the Supreme Court, and he is directed to sustain the demurrer and dismiss the bill of complaint.

The syllabus says:
A royal patent issued in 1866 by Kamehameha V to land covered by the mahalo of 1848, which describes the seaward boundary line as "along the sea at low water mark" conveys the land lying between high and low water mark.

The resolution of the Privy Council of August 29, 1850, did not have the effect of a law, as the Privy Council had no authority to enact laws.

The words "koe nae ke kuleana o na kanaka," or in their English equivalent therein, "reserving, however, the people's kuleana therein," mean a reservation of the house lots, taro patches or gardens of natives within the boundaries of the land.

The sole question upon which the case hinged, according to the Supreme Court, was whether Kamehameha V had the power to convey the land between high and low water mark. On this point the court says:

"While it is claimed that Kamehameha V was a constitutional monarch, it seems that he was little embarrassed by constitutional restrictions. By his own authority he abrogated the constitution of the kingdom that was adopted by Kamehameha III in 1852, and promulgated a new one to his own liking, August 24, 1864. Such a monarch certainly possessed the usual powers of sovereignty conceded to constitutional rulers, and had, the right to convey the land between high and low water mark, to the defendant's grantor."

The court further holds that the Privy Council had no right to enact laws and that the legislative power was in the House of Nobles and the House of Representatives. In concluding its opinion the court says:

"The Attorney General further contends that as the royal patent and award contained the words 'koe nae ke kuleana o na kanaka,' this reserved to the people all the rights below high water mark and not expressly recognized as private rights, and that this reserved all rights excepting the rights to fish and the right to remove coral rock. He states that the King was 'authorized by the law and by the land commission award to issue the royal patent reserving, however, the people's kuleana therein.' The people's kuleana was the land between high water mark and the low water mark, which Kamehameha had no authority to alienate."

By reference to the statutes of 1845-46, vol. 2, pages 81-94, it will be seen that the grants are to be made "subject to the private rights of the tenants, if there be any on the land," and on page 85, in a definite statement of the public rights to which the grant is subject, showing that the words "koe nae ke kuleana o na kanaka," have no reference to such public rights, but can only have reference to the house lots and taro patches and gardens of tenants living on land within the boundaries of the larger tract granted.

We are of the opinion that the words quoted have a well understood meaning as used in conveyances within this Territory, and that they, as well as the English equivalent "reserving, however, the people's kuleana therein," mean the reservation of the house lots and taro patches or gardens of natives lying within the boundaries of the tract granted.

The order overruling the demurrer of defendants is reversed, and the cause remanded with directions to the trial court to sustain the demurrer and order the bill dismissed.

In the concurring opinion of Mr. Fitch, he says that the right of bathing is not a right recognized by the government, and that there could be no obstruction of navigation by the allowance of such a privilege. He further holds that where lines have not been established by the Secretary of War, the riparian owners' right to reclaim extends to the line of practical navigation.

Internal Revenue Collector Roy Chamberlain began his first prosecution in the Territory yesterday for violation of the revenue laws. Manuel Castanba and his son Frank had been taken into custody by Sheriff Chillingworth on a charge of illicit distilling, and were brought before Judge Dickey for trial.

The case there was, however, nolle prosequi, a new charge having been preferred in the meantime before Commissioner Gill, a charge of violating the United States revenue laws. Both men appeared yesterday before Commissioner Gill, and their trial was set for Thursday. Bond was fixed in each case at \$1000.

Though this is the first criminal prosecution by internal revenue officials, it is by no means the first violation of the law. In past cases there has been a quiet settlement out of court by the payment of the required license and the penalty imposed by statute. The collector has discretionary power in the settlement of violations of the liquor laws. In other cases before the Territorial courts, it generally happened that the defendants had fulfilled the requirements of the United States laws and taken out a license, while in some the evidence was thought to be insufficient for a successful prosecution. It is reported that there are four or five times the number of United States licenses held in the Territory than Territorial licenses. At the Internal Revenue office yesterday it was stated that the arrest meant no change of policy on the part of the department, but that the Federal authorities were always ready to prosecute violators of the internal revenue laws when the evidence was deemed sufficient.

M. E. Lennon, the attorney who served a term in Oahu prison for gross cheat, was disbarred from further practice in the Territorial courts by the Supreme Court yesterday. Attorney General Dole went on the stand and testified to an appeal made to him by Mr. Lennon to save him from disgrace, and promising that he intended to return to the States and become a good citizen of the community, and try to live down his record here. He asked whether or not it would be thought disgraceful by the court if he failed to appear, and upon being told that it would not, said he would make no defense. George Sea testified to the service made upon the defendant, and Clerk George Lucas and Police Clerk Zabian testified as to the record in the criminal case. Chief Justice Frear then stated that the motion for disbarment would be granted, and the name of Lennon was ordered stricken from the list of practitioners in the Territory.

The case of Lili vs. Carthy was argued in the Supreme Court during the day.

Formal notice to advance the Kamalo case on the calendar to March 14th was given yesterday by plaintiffs. Defendants have given notice of motion to strike the cause from the calendar, on the ground that the clerk had not been served with the notice. The matter will be argued in the Supreme Court today.

Deputy Attorney General Cathcart has filed a motion to strike out the bill of exceptions in the case of Territory vs. Ah Moon, on the ground that no notice of the same had been given the Territory.

Chief Justice Frear gave notice yesterday that the Supreme Court would adjourn Thursday for the term.

Another new point was raised before Judge Robinson yesterday in the trial of the case of Territory vs. Chas. Malaia, charged with assault.

Judge Kaulikou, the defendant's attorney, moved to quash the indictment on the ground that the grand jury had no right to consider a misdemeanor, as this is, and which is properly triable before a District magistrate. Mr. Mathewman contended that the grand jury was an arm of the Circuit Court, and that the Circuit Court had the same jurisdiction as did the District magistrate, consequently the indictment was valid. Mr. Douthitt argued that Judge Humphreys had held in a similar case that the grand jury had power to hear misdemeanors, to which statement Mr. Kaulikou hotly objected, as being a highly improper attempt to influence the Court's opinion. Judge Robinson took the matter under advisement, holding that while he at first took the defendant's view of the case, he would postpone his decision until this afternoon. As the defendant has three more charges of a more serious character pending against him, his release would be of little value.

TROUBLES OF JURORS.

Crimp McCarthy is being given a second hearing for the assault he is alleged to have committed upon Katie Akai. Extreme difficulty was met in securing a jury, as the twelve men who heard the first case are disqualified, and many of the remaining members of the panel had already heard considerable of the case.

During the examination of jurors Judge Gear held that sleepiness is not a crime, and angered Attorney Bittling greatly thereby. When the name of G. A. Long was called the loungers at the court room door burst into laughter, and the cause for which was not disclosed until Long came into the court room rubbing his eyes. He had been sleeping on a couch just outside the court room, but Bittling thought it was something worse.

SENATOR IS FREED FROM ALIMONY.

Judge Humphreys filed a written decision yesterday denying the motion for a new trial in the divorce case of Susan Kahilina vs. Senator Kahilina, but setting aside the alimony of \$1000 previously allowed the wife. The court holds that the wife did contribute to the personal expenses of the household. "This is by no means unusual," says the court. "When the income of the husband is not sufficient to maintain the wife in the style in which she wishes to live, and she makes a contribution to the common fund, she does not thereby acquire the status of a creditor of the husband."

The court further holds that the income of the husband is shown to be about \$300 less than that of the wife, and therefore in view of all the circumstances, the decree is modified, and the award of \$1000 alimony to the wife is set aside.

COURT NOTES.

Appeals were filed in the District Court yesterday in the following cases: Harris Bros. & Co. vs. Tam Pong; Leoka Agau vs. Gus Cordes; Kong Shui vs. T. J. Fitzpatrick; and Lewers & Cooke vs. J. W. Redhouse.

A. S. Mahaulu was yesterday licensed by Judge Humphreys to practice in the District Courts of the Territory.

Pursuing his former policy in regard to trust investments in plantation bonds, Judge Humphreys yesterday morning sent out demands by letter for reports from the trustees of the Bishop Museum, the C. R. Bishop trust, and the estate of B. P. Bishop. The following is a copy of the form of letters:

"The Circuit Court, Honolulu, March 11, 1902.

Messrs. S. R. Dole, W. F. Allen, W. O. Smith, L. K. Loh, S. M. Damon, J. O. Smith, and A. W. Carter, trustees of the Bishop Museum, Honolulu, T. H.:

Gentlemen:—The records of this court show that your last account as trustees of what is known as the Bernice Pauahi Bishop Museum Trust was filed in this court on December 18th, 1901, covering the year ending with October 12th, 1900. You are hereby directed to file your account as trustee of said trust for the year ending October 12th, 1901, immediately.

"Very respectfully,

"A. S. HUMPHREYS,

"First Judge."

The annual accounts of the trustees under the will of the late Bernice P. Bishop were filed for the year ending June 30th, yesterday afternoon, showing the total receipts for the year to have been \$285,040.88 and the disbursements \$255,907.48, leaving a balance for the year of \$29,133.40. The report shows investments in the bonds looked down upon by Humphreys.

Accompanying the financial statement are reports of the various principals of the Kamehameha schools, which were endowed by the deceased.

The trustees report having continued filling in the swamp lands of the estate and speak also of the contemplated erection of a wharf at Kakaako. A report is made also of fencing lands for the preservation of the forests. Forest fires have endangered the properties of the estate at Kohala, Hawaii. There is a report also of the investigations of Engineer Tuttle into the water conditions of Waipua and Honokaa valleys on Hawaii. The cost of running the Kamehameha Schools for the year was \$113,250, slightly in excess of the amount spent the previous year. Of this amount \$37,178 is credited to permanent improvements. The list of investments of the estate shows \$6000 in Oahu Railway bonds and \$41,850 of this amount is in McBryde Sugar Company bonds.

Charles Dyke, principal of the Kamehameha Schools, made a lengthy report upon that school. He speaks of the success of the plan of concentrating the business offices, and says that two hundred dollars a month has been saved by that method. The total registration for the period was 145. The military organization is commended, as well as the work of the band, and the success of the athletic features now introduced is pointed out. The religious part of the education of the boys has not been neglected, and this instruction is also highly commended. The work in the manual training department was highly satisfactory, as it was also in agricultural department. The principal suggests also that the water supply is insufficient, and there is great danger from fire, recommending that electric lights be installed.

Miss Alice Knapp, principal of the preparatory department, submits a carefully prepared report upon that branch of work.

Miss Ida M. Pope, principal of the School for Girls, reports that there is a demand for trained teachers and for nurses among Hawaiian women, and suggests that opportunity should be offered Hawaiian girls to become trained nurses, as some among them have a special aptitude for this work. Larger school equipment is also needed.

An inventory of the estate is filed with the report, showing the property to consist almost exclusively of real estate on every island of the group. There is a cash balance on hand of \$29,133.40 reported.

FITS IN WITH HIS HOME PLACE

Through negotiations which were closed yesterday prior to the departure of the Kinai, the Young Hee Ranch of Maui passed into the possession of W. H. Cornwell. The transaction includes something like 6000 acres of land, there being reserved from sale about 1000 acres of corn and potato lands, which are the best of the arable portions of the estate.

The grazing lands, the timber and all the animals on the property are included in the transaction, and while the price is kept secret, the figures will be close to \$20,000 for the land transferred. The estate which is added to the ranches of Col. Cornwell adjoins the grazing lands which were under his control, and extends his fields until they adjoin those of the Ulupalakua ranch.

The lands which are embraced in the Young Hee ranch are those of the ahupuaa of Koanoulou, and as well one and one-half shares in the Sniffen estate. The major portion of the ranch is fine grazing lands, but there is enough timber on the tract to make that feature of sufficient value to be considered. The lands adjoin the Kihel plantation, and extend up to the mountain, giving all the water necessary for stock which range the place.

The purchase of the Young Hee ranch by Col. Cornwell carries out a plan which has been in his mind for several years. In fact some three years ago Col. Cornwell made a trip to China for the sole purpose of buying the ranch. He and Young Hee passed on the way and when the latter arrived here the ranch was purchased by Gear & Lansing, the price being \$55,000. There were a number of propositions which the owners tried to put through with reference to this ranch. At one time there was a proposal to form a great ranch, making the Young Hee holding the nucleus, which would embrace the Cornwell ranches, the Ulupalakua, the Kahikini and the Haleakala estates. The ranch was managed by Gear & Lansing and passed into the hands of the trustees of the firm last year. The negotiations were carried on by Messrs. Henry Waterhouse & Company for Col. Cornwell, and A. V. Gear and T. F. Lansing went down in the Kinai yesterday, followed by Col. Cornwell in the Claudine, to survey the reserved lands, and to transfer the main portion of the estate later.

The grand jury will probably make its final report to Judge Gear today or tomorrow. The jurymen have been investigating the saloon and illicit night, without the aid of Bailiff Ney, and that gentleman is very much aggrieved at the slight.

KONA MILL NOW READY

Could Be Grinding Next Week if Necessary

(From Wednesday's daily.)

Information from Kona yesterday, by the Mauna Loa, tells of progress in the mill and the general work of the Kona plantation, but the indications are that there must be some action soon if the estate is to be saved. The workmen are all there and anxious to work, but they will not be able to long hold out if their supplies are stopped.

Letters from Manager Cowan tell of the receipt of the orders from the receiver, and the fact that under that order there may be drawn for supplying the wants of 12 men employed in caring for the live stock only. The work on the fitting of the mill for the taking off of the cane this year, has progressed so well that if the cane could be cut and transported the mill could be worked next week. The men are said to be holding on so that they may be able to participate in any harvesting of the cane. Some of the workmen on the various small contracts have had no money for the past seven months, and they are anxious to see something in the way of cash.

The workmen on the plantation directly and indirectly number 1500, and are of opinion that they will be given some chance to save the cane they have grown, and so have refused to leave for other estates.

There were more meetings of the shareholders yesterday, and the chances are that there will be something definite known before the next sailing of the Mauna Loa. There is some talk of a settlement of the receiver's claims and an agreement to a trusteeship, which would have the effect of a receivership, if there are no claims left outside the agreement. There were many number of persons seen yesterday by the managing shareholders, but there has been no direct offer of the money to carry on the work until the sugar is being sent forward.

While the situation is good, there seems to be no disposition to undertake new things on the part of old sugar houses, and the situation remains without material change.

A gentleman who has just returned from Kona says that unless the officials in Honolulu are in a position to act with these men, supply them with food, they will soon be entirely out of supplies, and will have no means of obtaining any. The small storekeepers among the Japanese have about exhausted their supplies and credit on account of the condition of the sugar company's affairs.

"The Japanese are patient," he said, "and all they are asking is that they be supplied with provisions until money can be raised. What hungry workmen might do to obtain food for themselves and their wives and children, is a great guess."

HAVING A RUN ON CHAMBERLAIN'S COUGH REMEDY.

Between the hours of 11 o'clock a. m. and closing time at night on January 25, 1901, A. F. Clark, druggist, Glade Springs, Va., U. S. A., sold twelve bottles of Chamberlain's Cough Remedy. He says, "I never handled a medicine that sold better or gave better satisfaction to my customers." This remedy has been in general use in Virginia for many years, and the people there are well acquainted with its excellent qualities. Many of them have testified to the remarkable cures which it has effected. When you need a good, reliable medicine for a cough or cold, or attack of grip, use Chamberlain's Cough Remedy, and you are certain to be more than pleased with the quick cure which it affords. For sale by all druggists and dealers. Benson, Smith & Co., Ltd., agents for H. I.

The Rapid Transit Company is considering the use of oil for fuel.

LOSING FLESH.

Are you losing flesh? If so, better consult your doctor at once. He will tell you the cause. We can provide the remedy, which is Scott's Emulsion of cod-liver oil.

We have known persons to gain a pound a day, by taking an ounce of the Emulsion.

A young woman in Batavia writes us she had lost twenty-five pounds in three months, and her lungs were seriously affected. She took three bottles of Scott's Emulsion and gained fifteen pounds, and was able to resume her work.

It will cure consumption in the early stages. It is a remarkable flesh producer.

Send for Free Sample

SCOTT & BOWNE, Chemists, 409 Pearl St., N. Y.

Double Bill in Campaigning.

LOUISVILLE, Ky., March 5.—Miss Lotta Greenup, of Paducah, Ky., has taken to the stump with her father in his campaign for the democratic nomination for member of Congress from this district. Mr. Greenup is a music dealer, and Miss Lotta an accomplished musician. During her father's tours of the district she plays the violin and sings before the audiences which he addresses. The South has seen nothing like it since Bob Taylor's fiddling tour of Tennessee. The double bill is drawing big crowds everywhere.

Etruria Lost Propeller

NEW YORK, March 4.—The Etruria lost her propeller in midocean, according to a report sent to the World by a representative on board. An attempt is being made to tow the Cunard liner to the Azores by the steamer William Clift.

IT'S INDISPUTABLE.

Because it's in Honolulu and Can Be Investigated

Like all statements which have preceded this and like all which will follow, the party interested is a citizen. In a city of about 25,000 people it is hard to hide the doings of your neighbors. It is an easy matter to find the residence of Mr. Metcalf. The reader has not to sit down after he peruses this statement, which follows, and wonder—as he would wonder were this case in San Francisco—if the facts can be credited. He has not to ask "Are they genuine?" The man is here at home. Honolulu proof should convince. Read this:

Mr. F. Metcalf of this city gives us the following information: "I was afflicted with a painful feeling in my back for over five years. The various remedies resorted to did me no good, until, falling in with the advice of a friend (Mr. W. J. Maxwell) I procured at the Hollister Drug Co.'s some of Doan's Backache Kidney Pills. I had hardly finished taking them when the pain left me altogether, and I now feel that I have been completely cured of the terrible suffering I underwent formerly. By keeping a box of the pills in the house I am fortified against any possible return of my complaint at future times. It seems almost miraculous that the pains should have vanished so speedily. All sufferers from backache should get some of Doan's Backache Kidney Pills." Doan's Backache Kidney Pills are sold by all druggists at 50 cents a box, six boxes \$2.50, or will be mailed on receipt of price by the Hollister Drug Co., Honolulu, wholesale agents for the Hawaiian Islands.

Clarke's Blood Mixture

THE WORLD-FAMED BLOOD PURIFIER AND RESTORER. IS WARRANTED TO CLEAR THE BLOOD from all impurities from whatever cause arising. For Scrofula, Scurvy, Eczema, Skin and Blood Diseases, Blackheads, Pimples and Sores of all kinds, it is a never failing and permanent cure. 1. Cures Old Sores. Cures Sores on the Neck. Cures Sore Legs. Cures Blackhead or Pimples on the Face. Cures Scurvy. Cures Ulcers. Cures Blood and Skin Diseases. Cures Glandular Swellings. Clears the Blood from all impure matter. From whatever cause arising. It is a real specific for Gout and Rheumatic pains. It removes the cause from the Blood and Bones. As this Mixture is pleasant to the taste, and warranted free from anything injurious to the most delicate constitution of either sex, the Proprietors solicit sufferers to give it a trial to test its value.

THOUSANDS OF TESTIMONIALS OF WONDERFUL CURES FROM ALL PARTS OF THE WORLD.

Clarke's Blood Mixture is sold in bottles, 25¢ each, and in cases containing six times the quantity, 125¢—sufficient to effect a permanent cure in the great majority of long-standing cases. BY ALL CHEMISTS AND PATENT MEDICINE VENDORS throughout the world. Proprietors, THE LITTLE AND MIDLAND COGNAC DISTILLERS, LTD., 10, Abchurch Lane, London, E.C. 4, England. Trade mark—"BLOOD MIXTURE."

CLARKE'S BLOOD MIXTURE.

CAUTION.—Purchasers of Clarke's Blood Mixture should see that they get the genuine article. Worthless imitations and substitutes are sometimes palmed off by unprincipled vendors. The words "Lincoln and Midland Cognac Distillers, Ltd., London, England," are engraved on the Government stamp, and "Clarke's World-Famed Blood Mixture" blown in the bottle. WITHOUT WHICH NONE ARE GENUINE.

INSURANCE

Theo. H. Davies & Co. (Limited.)

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OF LONDON, FOR FIRE AND LIFE. Established 1836. Accumulated Funds £2,975,000.

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OF LIVERPOOL, FOR MARINE. Capital £1,000,000.

Reduction of Rates. Immediate Payment of Claims.

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The Ewa Plantation Co.
The Waiwala Agricultural Co., Ltd.
The Kohala Sugar Co.
The Waimea Sugar Mill Co.
The Fulton Iron Works, St. Louis, Mo.
The Standard Oil Co.
The George F. Blake Steam Pump, Weston's Centrifugals.
The New England Mutual Life Insurance Co. of Boston.
The Aetna Fire Insurance Co. of Hartford, Conn.
The Alliance Assurance Co. of London.

ARRIVAL OF THE "CORONADO"

A FRESH SUPPLY OF

"Diamond Head" Brand Gasoline

DISTILLATE IN DRUMS

Special Sale

for two weeks of

GARDEN HOSE

Our Hose is of the best quality and guaranteed to give satisfaction.

New and Staple Goods Just Received

Pacific Hardware Co., Ltd.

Fort, Bethel and Merchant Sts, Honolulu.

Have you seen our Rat Traps?

HUMPHREYS FINDS SMITH GUILTY OF CONTEMPT

(Continued from page 1.)

1888, see chapter 42, Laws of 1888, which provides, section 1, that "the publication of the proceedings before any court or judge shall not be deemed to be contempt, nor shall such publication be punishable for contempt." Section 2, "Constructive contempts shall not be punishable as such."

We are of the opinion that section 1 and section 2 of the Act of 1888 must be construed together under the familiar principle of law that statutes in pari materia must be construed as a whole. The constructive contempts which are declared not to be punishable as such in section 2 of the Act of 1888 manifestly refers to section 1 of the same act, which declares that the publication of the proceedings before any court shall not be punishable as contempt.

The right then to publish proceedings of a court—truthful and fair proceedings—the truthful and fair report of the proceedings of the court, substantially accurate reports, is a right which is expressly given to the citizen by the laws of this Territory, and it is a right which this court cannot impinge upon even if it were so disposed. But this right is limited to a substantial, accurate publication of the proceedings, and where the publication does not consist or purport to consist of a publication of the proceedings, but consists of invention and of falsehood, calculated to bring the courts into odium, hatred, ridicule and contempt, thereby embarrassing the influence of the courts, obstructing and impeding, embarrassing and hindering the administration of justice, it is a contempt, and punishable as such under our laws.

In the State against the Editor Publishing Company, Lawyers' Reports Annotated, volume 50, page 197, it appeared that the publication was made with reference to a pending case. The editor of the paper was cited to show cause in that proceeding why he should not be dealt with as and for a contempt of court. He appeared in court by counsel and defended the action against him upon the grounds that "no disrespect to the court or to any member of the court was intended; that the case of the State vs. Smith was not pending; that the publications were made with good motives, and were not calculated to obstruct the due administration of justice." The Kennedy case was pending. Of that, said the court, we have judicial knowledge, and the defendant must surely have known that the case was in court and undetermined, for it appears that the attorney for respondents brought the chief of Mr. Kennedy's attention to that article headed "Worthy of Serious Consideration," immediately followed a meeting between the editor and the lawyer.

The defendant in this case has not taken the stand. He personally has not denied under his corporate oath in the vision of this court that he had no knowledge of the pendency of the case of the Territory of Hawaii against McCarthy. The copy of his paper, which contains the contemptuous cartoon in question also contains, in another column, a notice of the fact that this case is pending, and that a jury had been sworn in the cause for the purpose of trying it.

The first and third defenses are futile; they amount to a denial that the defendant intended to violate the law. Under the conceded facts the course pursued by him was indefensible. His conduct is not susceptible of an honorable construction. The statute declares that any wilful attempt to obstruct the proceedings or hinder the due administration of justice in any suit, proceedings, or process pending before any court shall constitute a criminal contempt and be punished as such.

This statute is merely declaratory of the law as it has existed for hundreds of years. It is a legislative recognition of the authority of the courts to deal in a summary manner with persons who do any wanton, deliberate or intentional act calculated to embarrass them in the discharge of their important duties. In the history of American jurisprudence there can be found no case in which this power has been harshly or oppressively exercised by a court of final jurisdiction. Indeed, such courts have not often called publishers to account for constructive contempts, because it has rarely happened that respectable public journals wounding any considerable influence have deliberately employed outlaw methods in attempting to control judicial action.

Cases of this kind originating in the lower courts are very numerous. We will not take the time to cite them or any of them. But as was said by the Supreme Court of Iowa in the case of Field against Thornell, 106 Iowa, page 15, it seldom happens that an honorable journalist so far forgets his self respect as to trespass upon the rights of the judiciary, or to seek to control or improperly influence its conclusions. We have, of course, no desire to restrain in the slightest degree the freedom of the press, or to maintain the dignity of the court by inflicting penalties on those who may assail us with defamatory and malicious publications. Our decisions and all our official actions are public property, and the press and people have the undoubted right to comment on them, and criticize them, and censure them as they see fit. Judicial officers, like other public servants, must answer for their official actions before the chancery of public opinion; they must make good their claims to popular esteem by excellence and by virtue, by faithful and efficient service, and by righteous conduct. But while we concede to the press the right to criticize freely our decisions, we do not deny to any individual or to any class of men a right to subject us to any form of coercion with the view of affecting our judgment in a pending case. In the Iowa case above cited it is said: "Courts are constantly passing on questions affecting the life and liberty of the citizen as well as the rights of property, and the freedom of the judiciary to investigate and decide, is quite as important to the well being of society as the freedom of the press." Men, said the court, know them well, "are flesh and blood and apprehensive." Few stand unmoved by the clamor of the multitude. Various motives, of course, conspire to make people deny and even to disguise from themselves the fact that they are amenable in any degree to the force of popular opinion. But it is folly to deceive ourselves, and it is futile to attempt to deceive others. Threats of public clamor have before now swayed the judgment and fixed the purposes of resolute men, and it will be well to remember that what has happened may occur again. Men have in the

past yielded to the demands of an angry populace, and it is quite possible that they may yield again. Moral fiber is not stronger now than it ever was before. Courts are charged with the solemn, sacred and high function of administering justice, and it is their duty, not only to give to every suitor his demandable right, but to give him assurance that no banned and hostile influence shall operate against him while his cause is under consideration before the court, and before the jury. A litigant is entitled not only to a just decision, but to a decision altogether free from coercion or suspicion of coercion. Nothing else will satisfy him, nothing less can fill the measure of his expectations. He has no standard with which to gauge judicial firmness; and if the court has been exposed to influences calculated, as in the McCarthy case, to operate against him, he will not know whether an adverse decision is the voice of the law or the cry of a cowardly and brutal editor.

Our views upon this matter are well expressed in the following excerpt from the opinion of Judge Lawrence in the People against Wilson, 64 Illinois, page 195: "A court will, of course, endeavor to remain wholly uninfluenced and unprejudiced by publications like that under consideration, but will the community believe that it was able to do so? Can it even come always to the aid of itself? Can men always be certain of their mental poise? A timid man might be influenced to yield, while a combative man would be driven in the opposite direction. While the actual influences are on one side or the other, so far as it is felt at all, it becomes dangerous to the administration of justice. Even if a court is happily composed of men of mature years and of such firm and equal temper in charging their duty to the law, in either direction, nevertheless, a disturbing influence has been thrown into the counsel chamber, which it is the wise policy of the law to exclude." Equally pertinent are the remarks of Judge Elliott, in People ex rel. Connor vs. Stapleton, 18 Colorado, 568. Judges are human; they are possessed of human feelings, and when accusations are publicly made as by a newspaper article charging them directly or indirectly with dishonorable conduct in a case pending before them and about to be determined, it is idle to say that they need not be embarrassed in their consideration and determination of such case. They will inevitably suffer more or less embarrassment in the discharge of their duties according to the nature of the charges and the source from which such charges emanate. When a judge tries and determines a case in connection with which public charges against his judicial integrity have been published, the public as well as parties interested are frequently led by the publication of the charges to distrust the honesty and impartiality of the decision, and thus confidence in the administration of justice is impaired. It is not only important that the trial of causes shall be impartial, and that the decisions of the courts shall be just, but it is important that causes shall be tried and judgments rendered without bias, without prejudice or improper influence of any kind. It is not merely a private wrong against the rights of litigants and against the rights of judges, it is a public wrong, a crime against the State, against the decency and good order of society. That a party does not succeed in such undertaking which he manifestly intends lessens his offense only in degree. His ability to do harm is confined; it is limited by the known personal weaknesses of the writer of such articles, and the contempt into which they generally bring him. We feel quite sure that the publications here in question have not in the least deterred us from discharging with fidelity our duty in the case at bar. They were manifestly intended to overawe and intimidate this court, they appearing to be put forth for the purpose of preventing a decision by a jury in favor of the defendant. They were under the circumstances palpably acts of journalistic lawlessness and anarchy, calculated to weaken the independence of the court and to destroy confidence in its judgment. To justify them is to deny the supremacy of the law, and to answer the doctrine of newspaper absolutism under the guise of a free press. To admit that publications may promote their interests in pending litigation by resorting to methods not available to others, is to strike down our much vaunted principle of "equality before the law," and to declare that journalists who choose to become malefactors are a privileged class, and entitled as such to go unwhipped of justice. But the law recognizes no such distinction; it never has recognized it. It accords to publishers, says Chancellor Wallworth, no rights that are common to the rest of the community have; no more, and no less. A man who speaks in a newspaper has no greater right than the man who speaks out of it. A newspaper is no sanctuary behind which a person can shield himself for breaking the solemn laws of the land. We have not acted in this case out of any spirit of resentment, indeed, we have no reason to feel specially aggrieved. The natural tendency of the article, however, and the cartoon is to interfere with and obstruct the due administration of justice of this court.

It is the unanimous opinion of the judges of this court that the defendant should be held guilty as charged in the complaint herein.

Mr. W. O. Smith, in answer to the remarks of the court, said that there was no necessity for a further showing on the part of the respondent, that a sworn report had been made in which personal knowledge was disclaimed, and that the cartoon related to the first trial, a case in which the decision had already been given.

Judge Gear replied that the contempt was not a constructive one, and that that statute did not apply to written or spoken words, and consequently the defendant could not be purged of the contempt. He said he would consider the disclaimer of personal knowledge on the part of Mr. Smith in mitigation of sentence. In concluding Judge Gear said:

It is therefore the judgment of this court that you be and you are hereby adjudged guilty of contempt of court, as set forth in the affidavit, and you are sentenced to imprisonment in Oahu Jail for the period of thirty days, without hard labor."

Judge Gear was interrupted several times in attempting to pass sentence by Judge Humphreys, who stopped him by

whispers. After the imposition of the sentence the court ordered Bailiff Hopkins to take charge of Mr. Smith, and he was compelled to take a seat near the prisoners' bench. There was a long delay in the preparation of the mittimus, and it was not served until after 3 o'clock, and then Bailiff Hopkins refused the attorneys a copy for use in preparation of the petition for a writ of habeas corpus. Mr. Lewis tried to get a copy of the mittimus from Judge Gear, and the court finally explained that he had given the only extra copy to his evening paper. In fact, it was given out nearly an hour before the service was made.

Mr. Smith was taken to the police station, and in the meantime L. A. Andrews and Mr. Lewis appeared before Chief Justice Frear with the following application for a writ of habeas corpus:

IN THE SUPREME COURT OF THE TERRITORY OF HAWAII, BEFORE HON. W. F. FREAR, CHIEF JUSTICE, AT CHAMBERS.

In re Petition of Walter G. Smith, for a Writ of Habeas Corpus.

To the Honorable Walter F. Frear, Chief Justice of the Supreme Court: The petition of Walter G. Smith, an American citizen residing in Honolulu, Island of Oahu, Territory of Hawaii, respectfully represents:

(1) That your petitioner is imprisoned and restrained of his liberty in Honolulu, Oahu, by one A. M. Brown, High Sheriff of the Territory of Hawaii.

(2) That the cause or pretence of such imprisonment or restriction according to the knowledge and belief of your petitioner is that the said A. M. Brown claims to have and to be acting under an order of arrest and mittimus issued by George D. Gear, judge of the First Circuit Court of the said Territory.

(3) That the said order or mittimus is based upon the warrant or order by said judge that your petitioner is in contempt of court in publishing, printing and circulating a statement of and concerning the said Judge of the Circuit Court, and the cartoon or picture with reference to a cause now pending and undetermined in the Circuit Court, to wit, the case of the Territory of Hawaii against William McCarthy, and which said statement and publication and picture or cartoon is well calculated to prejudice and will prejudice the minds of the jury sworn to try the issues, and hinder, obstruct and prevent the court and jury in the discharge of their duties and the administration of public justice, which order is based upon an order to show cause why petitioner should not be adjudged guilty of contempt, and petitioner's return thereto, and the proceedings had therein and before said Circuit Court.

(4) That your petitioner claims that the said judge of the said Circuit Court has and has no right or jurisdiction to issue said order or mittimus, and that the same is illegal and void for the reasons:

I—That the act complained of in the motion is not in law a contempt of court for which the court has power to punish said respondent.

II—That the court can not legally punish as for contempt a publication of the nature of that in said order complained of, made in a newspaper, and not done in the immediate presence of the court.

III—That the publication of a cartoon or picture, such as that complained of, done without knowledge by the person so publishing the same, that the case pending before the court would or might be prejudiced thereby, or without knowledge that any such case was pending, is not contempt of court, and cannot be punished as such.

IV—Under the statutes of the Territory of Hawaii no publication out of court in relation to the court or to any of its members amounts to contempt, and the same cannot be punished as such.

V—That the return and answer filed herein, and the proceedings had thereunder, fully show that the defendant is fully purged himself of any alleged contempt, and that no such contempt was committed.

VI—That the said order or mittimus is in violation of the constitutional rights guaranteeing and providing for the freedom of the press.

VII—That if said act complained of was a contempt of court whatsoever, the same was merely a constructive contempt, and not punishable by the Circuit Court.

VIII—That the record of proceedings shows that said proceedings were illegal and irregular.

IX—All of which said claims appear more fully in the order to show cause, the affidavits attached thereto, the petitioner's motion to discharge the rule and answer and return made by this petitioner, and in the proceedings had before said Circuit Court upon which the said order or mittimus was issued, and the proceedings had in connection therewith to which said order to show cause, motion, return and proceedings now on file in the said Circuit Court, your petitioner asks leave to refer for greater certainty and make a part hereof, and a copy of which order to show cause and affidavit in support thereof, and of petitioner's motion to discharge the rule and answer and return is hereto attached and made a part hereof.

(5) That your petitioner has been unable to obtain a copy of said order, warrant or mittimus under which he believes he is held, and asks leave when he can obtain the same to attach them hereto and make them a part hereof.

Wherefore, your petitioner prays that a writ of habeas corpus forthwith issue out of this court directed to the said A. M. Brown, requiring him to produce the body of the said Walter G. Smith before this court at such day and hour as in said order may be set forth, and that upon due investigation by the honorable court of the matters and things hereinbefore set forth and properly appurtenant to the subject matter of this petition, said Walter G. Smith may be discharged and freed from said restriction and imprisonment, and that pending the hearing of this petition your petitioner may be admitted to bail.

WALTER G. SMITH.

After reading the affidavit and accompanying papers carefully, the Chief Justice granted the petition, and gave the petitioner leave to add the mittimus to the record, when they should be given a copy. The writ was made returnable April 21st, and bond was fixed at \$500. The following is the order made by Judge Frear upon which High Sheriff Brown immediately released Mr. Smith:

IN THE SUPREME COURT OF THE TERRITORY OF HAWAII

In re Petition of Walter G. Smith, for a Writ of Habeas Corpus.

The Territory of Hawaii to A. M. Brown, greeting.

We command you that you have and produce before our Supreme Court the body of the said Walter G. Smith at the Territory of Hawaii at the Court-house at Honolulu, on Monday, the 21st

NEW JURY IS DRAWN McCarthy Case Again on Trial.

The trial of the McCarthy case was begun before Judge Gear yesterday afternoon. At the opening of court in the forenoon the court allowed the withdrawal of a juror from the first panel, and a mistrial was declared. Deputy Attorney General Douthitt insisted upon a trial for McCarthy at this time of court, and the court thereupon ordered a special venire for 25 talesmen. It was 3 o'clock when Bailiff Ellis had succeeded in corraling a sufficient number of men, but the jury was not difficult to secure. The following is the jury as finally impaneled: H. A. Wilder, N. E. G. Jackson, R. Duncan, D. L. Austin, J. M. Levey, J. H. Worrall, Louis Singer, W. H. Rogers, W. Broady, W. Roland, W. W. Diamond, and A. L. Spule. The trial was thereupon continued until this morning.

DAVIS IS CALLED DOWN.

George Davis' continued attacks upon the attorney general brought forth a sharp rejoinder from Deputy Attorney General Cathcart yesterday morning. Davis had been appointed counsel for the Williams brothers, who were acquitted of the charge of burglary last week, and immediately reindicted by the grand jury on a charge of larceny in the first degree. The defendants were up for arraignment yesterday, but Davis was not present, though soon afterwards he was noticed passing the door of the court room.

Judge Gear called him in and wanted to know why he didn't appear in behalf of his clients. Davis replied that he had been working hard on charity cases for a week and thought he should be allowed some relief now. He asked to be excused, but the court refused, and then Davis began to rant and rave in his usual style about constitutional rights, and stated that these boys had been indicted by the attorney general through a "job."

Douthitt objected to the remarks at this time, and Davis began to hedge. Then Cathcart took a hand and wanted the court to understand that the attorney general did not indict the Williams brothers, but they had been regularly indicted by the grand jury. Davis retorted that Cathcart wasn't the attorney general "yet," to which the latter replied that he had conducted the criminal cases before the grand jury.

Davis then suggested that probably some of the young attorneys might be given a chance, or that Col. Fitch be allowed to defend by himself. "I am under heavy expenses," said Davis, "and am not overburdened with cash." Mr. Thompson, who was representing Col. Fitch, said that he was also laboring under the same unfortunate stress of circumstances.

Davis muttered something about "spendthrifts," and then shut up. The case was set for this afternoon, but will probably go over for the term, as tomorrow is the last day.

There was another squabble about a case in which Mr. Chillingworth was interested, and he also asked for a continuance. Mr. Cathcart objected, and wanted the matter heard this term, as the witnesses were liable to become scattered. Here Davis slipped in and suggested that the witnesses could be sent to jail, and Cathcart replied angrily that there was little justice in holding the witnesses in jail while the defendants were at liberty on bail.

THE INJUNCTION CASE.

The Rapid Transit injunction case was argued before Judge Robinson yesterday, and by him taken under advisement. He will render a decision Saturday morning.

The plaintiffs, a Chinese corporation, ask that the Rapid Transit Company be restrained from building its lines through the land alleged to be owned by them near Waikiki. The defendants have agreed to discontinue operations until the decision is given tomorrow.

SUPREME COURT ADJOURNS.

The Supreme Court adjourned yesterday for the session, to April 21st. The appeal from the attorney general's ruling on stamp duty on written proxy is to be submitted on briefs.

COURT NOTES.

Judge Humphreys made an order yesterday dismissing the case of Territory vs. Liliuokalani in accordance with the Supreme Court decision.

An answer has been filed in the divorce case of Thomas Smith vs. Margaret F. Smith.

Chas. F. Murray has asked to be appointed administrator of the estate of T. B. Murray. The estate is valued at \$200.

The eighth annual account of the J. H. Wood Trust were filed yesterday, showing receipts for the year to be \$75,315.23 and expenditures \$60,025. Part of the estate is invested in Oahu Railway and Land Company bonds.

Application has been made for the appointment of a trustee for Jacobus J. Walsh, a minor, in order that he may withdraw a deposit of \$150 from the First National Bank.

Chung Kin has sued Hyman Bros. for \$100.00, and for \$100.00 damages for alleged unlawful action in carrying away goods from plaintiff.

day of April, 1902, at 10 o'clock a.m., the body of Walter G. Smith, who is unjustly imprisoned and restrained of his liberty, as it is said, and then and there to do what shall be ordered concerning him in his behalf, and have you there this writ with your doings thereon, and that further pending the hearing of this cause, admit the said W. G. Smith to bail in the sum of \$500.

Witness the Honorable W. F. Frear, Chief Justice of our Supreme Court, at Honolulu, this 12th day of March, 1902. W. F. FREAR.

Chief Justice of the Supreme Court, Territory of Hawaii.

TICKETS IN DEMAND BY SOCIETY FOLK

With a blaze of society glory, won by earnest and consistent work, the season of the Oahu Polo Club will close on Saturday after a game which promises to draw an immense crowd to Kapiolani Park. The game is that for the benefit of the McKinley Memorial fund, and from the way the tickets are going the attendance will be one which will break the record.

The teams have been hard at work for the game, and if practice counts there should be such play as will be worth the attention of any devotee of the sport. The members have been at work in the early morning and there is little else to be said than that there has been such a final tuning up of men and ponies as will make the play fast, at the very least. The ponies are getting into the best of shape, though there was one mishap to the red team. In the dismounting of one of the ponies of Shing's, an animal which classes as one of the very best ponies in the league.

The band will be on hand at 3 o'clock and play will commence at 3:30 o'clock. The officials of the day will be S. E. Darnen, umpire; Albert Waterhouse and C. W. Pickey, referees; J. P. Erdman and F. T. P. Waterhouse, linesmen; Ernest A. Mott-Smith, timekeeper. While these gentlemen will have to do with the game proper, there will be a reception committee, which will include every member of the club, and which will devote its time to the placing of visitors, where they will have the very best view of the field.

A souvenir program, with sketches by Yardley and Dunn, will be distributed, and in addition there will be ribbons of the colors of the opposing teams, red and blue, which will have a legend setting forth the occasion for the game, and giving the names of the teams with blanks where the final score may be inserted for the purpose of keeping a record of the game. These souvenirs will be sold for the benefit of the McKinley fund, too, and without doubt will add to the revenues of the day. There has been a large sale of tickets by the corps of agents and at the principal stores, and there seems to be every reason to expect the presence of a crowd which will fill the park as it has not yet been filled for the purpose of witnessing a polo game.

PLAN FOR FUNERAL OF E. MACFARLANE

The remains of the late Edward C. Macfarlane, who reached this city today in the Alameda, according to the information conveyed by the last steamer from the Coast, Mr. and Mrs. F. W. Macfarlane and the young widow will arrive in the ship as well.

The present plans are that the casket shall be removed to the residence of Mr. H. R. Macfarlane, Punahou street, although the hour at which this will take place has not been set, and will not be until the arrival of Mr. F. W. Macfarlane.

Mr. E. C. Macfarlane, at the request of his bride and his brother and sister-in-law, Mr. and Mrs. F. W. Macfarlane, became connected with the Catholic Church. The funeral, therefore, will take place from the Catholic Cathedral. The plans at present call for the services at 3:30 o'clock Sunday afternoon. These plans may be changed if the widow so desires.

All arrangements for the funeral will be in charge of Mr. J. A. Hassinger, an old friend of the deceased. The list of pallbearers has been partially prepared, but will not be completed until Mr. F. W. Macfarlane has been consulted.

Mrs. F. W. Macfarlane will make her home with Mr. and Mrs. F. W. Macfarlane, at Waikiki, for the present.

THE EGBERT FROM MANILA

Just as the Collier Alexander passed along the channel yesterday afternoon on her way to sea, the transport Egbert from Manila slowly steamed past her and was soon occupying the berth at Naval Wharf No. 1, vacated by the big coal carrier.

The Egbert sailed from Manila on February 15 and was 23 days reaching Honolulu. Except for a little bad weather at the start, the trip was a remarkably pleasant one, and made in fair time. There are only 463 passengers on board, and the vessel stands very high out of the water, seeming to tower above the Warren as she docks alongside her.

The troops aboard the Egbert are a battalion of the Twentieth Infantry and 365 casuals. The passenger list is as follows:

Painting the Drilled.

"As clean as the driven snow," will soon apply to the black, grim, smothered-looking Drilled Painters, who began working on the roof of the structure yesterday with white paint, warranted to make it cool in the sunshine, and in a week or so the entire building will be completely covered. The transport forces of the ship is due to an original design some time since by the United States Army Department that the Drilled must be painted to conform with the color of the old stone barracks. During the last ten days when the troops of the transport Warren were crowded out in the army, the men complained much of the heat. It is believed that the white chemical paint, said to be of a kind that will keep the roof from heating, will do much to remedy this defect.

All Run Down No Appetite. Weak. Discouraged.

Warm climates always debilitate the nervous system. The digestion is slow, and the liver becomes sluggish. Impurities in the blood accumulate, and you go about downhearted and depressed. All this may be quickly changed with proper treatment.

Mrs. C. Kennedy, of 28 Erskine St., North Melbourne, Victoria, sends us her photograph and this letter:



"I had lost my appetite, was very weak, and all run down. Nothing did me good, and I was discouraged. I then tried

AYER'S Sarsaparilla

and it brought me right up to my usual health and strength. And I want to add a word here about Ayer's Cherry Pectoral. It has cured me of such hard coughs and colds that I feel I could not do without it. For family remedies I rely on that word, 'Ayer's'."

Keep your bowels in good condition with Ayer's Pills. Take just enough to produce one good free movement of the bowels daily.

Prepared by Dr. J. C. Ayer Co., Lowell, Mass., U. S. A.

HOLLISTER DRUG CO., Agents.

Castle & Cooke, -LIMITED-

LIFE and FIRE INSURANCE AGENTS. . .

AGENTS FOR

New England Mutual Life Insurance Co. OF BOSTON.

Aetna Life Insurance Company OF HARTFORD.

Wm. G. Irwin & Co., LIMITED.

Fire and Marine Insurance A'gts.

AGENTS FOR THE

Royal Insurance Company of Liverpool, Alliance Assurance Company of London, Alliance, Marine and General Assurance Co., Ltd., of London, Scottish Union National Insurance Company, Edinburgh, Wilhelms of Madburg General Insurance Company, Associated Assurance Co., Ltd., of Munich and Berlin.

CHAS. BREWER & CO'S. NEW YORK LINE

Ship I. F. Chapman SAILING FROM NEW YORK TO HONOLULU April 1, 1902.

For freight rates apply to CHAS. BREWER & CO., 27 Kilby St., Boston.

C. BREWER & CO., LTD. Honolulu.

Auction Sale of Delinquent Sugar Stock.

ON SATURDAY, MARCH 15, 1902, at 12 o'clock noon, at my salesroom, 65 Queen street, Honolulu, I will sell at Public Auction by order of the Treasurer, Mr. Elmer E. Paxton, the following certificates of stock in the Oahu Sugar Co., Ltd., unless the twentieth assessment, due December 21, 1901, and delinquent February 21, 1902, with interest and advertising expenses, is paid on or before the day and hour of sale at the offices of the B. F. Dillingham Co., Ltd., Stangenwald building, Honolulu.

Cert.	No.	Name	Shares
207	W. L. Wilcox		50
1471	W. L. Wilcox		50
1472	W. L. Wilcox		50
1473	W. L. Wilcox		50
1474	W. L. Wilcox		50
1475	W. L. Wilcox		50
1476	W. L. Wilcox		50
1477	W. L. Wilcox		50
1478	W. L. Wilcox		50
1479	W. L. Wilcox		50
1480	W. L. Wilcox		50
1481	W. L. Wilcox		50
1482	W. L. Wilcox		50
1483	W. L. Wilcox		50
1484	W. L. Wilcox		50
1485	W. L. Wilcox		50
1486	W. L. Wilcox		50
1487	W. L. Wilcox		50
1488	W. L. Wilcox		50
1489	W. L. Wilcox		50
1490	W. L. Wilcox		50

ELMER E. PAXTON, Treasurer.

Honolulu, March 7, 1902.

JAS. F. MORGAN, AUCTIONEER.

The ship was reported off Koko Head about 1 o'clock yesterday afternoon and two hours later she docked at the Pacific Mail wharf. The steamer, as is left San Francisco on the 5th inst., brought 218 bags of mail, five days later papers and 2055 tons of through freight. She will sail at 10 a.m. today for the coast, proceeding to Manila and inaugurating the new through schedule of the Pacific Mail, Oriental and Colon lines. Two Kisen Kaisha companies. The ship has 15 passengers for Manila.

The Alameda from the Coast is due today, but may not arrive, on account of having been delayed in quarantine.

IS CARTOON CONTEMPT?

Judge Gear Cites Advertiser's Editor.

(From Thursday's Daily.)

The publication of a cartoon in yesterday's Advertiser is held by Judge Gear to be contempt, and acting upon the motion of Attorney Blitting, he issued a citation for the appearance of Walter G. Smith, as editor, in court at 9 o'clock this morning. The citation was issued shortly before 1 o'clock yesterday, returnable at 3, but service was not had in time for appearance in court at that hour, and continuance was then granted. In the meantime the case of William McCarthy, which is now on trial, was continued, Blitting in his motion asking that the jury now sitting on the case be discharged, as having been prejudiced. Upon the opening of court yesterday morning, Mr. Blitting presented a motion for continuance, based upon the following grounds:

"That this cause is set for trial before a jury which has been duly impaneled and sworn to try said cause, upon this the 12th day of March, A. D. 1902, and that this cause is now pending and in progress of trial in this court."

"That including the allegation in the first paragraph hereof contained and notwithstanding the prohibition of the law, on this the 12th day of March, A. D. 1902, and while this cause is pending and actually on trial in this court, a certain newspaper published in Honolulu, Island of Oahu, Territory of Hawaii, and within this jurisdiction, called and headed as 'The Pacific Commercial Advertiser,' published a ridiculous, libelous and unlawful cartoon, meant and intended to be suggestive and contemptuous of this honorable judge before whom this trial is pending, and tending and intending to prejudice the public respecting the trial of said cause and particularly against the honorable judge now presiding over the trial of this cause, and to obstruct and pervert the administration of justice; and"

"That said publication is a knowing and malicious invention against the court, and was intended and is intended to bring said court into ridicule, contempt, discredit and odium."

Judge Gear took the view that the trial of the case having been started, the cartoon was contempt, and he quoted from the penal code relating to contempt of court. He said further:

"Personally I care nothing about the articles and pictures. They are a source of amusement to me. I took this oath to administer justice to the best of my ability and knowledge of law, and it is a matter of indifference to me how many untrue animadversions upon me are made. In the present instance McCarthy was released because there is no such crime as mayhem in the Hawaiian statutes. If he had been sentenced he could have been released on habeas corpus. There is no question about that, and if there is any one in Oahu jail serving for mayhem now, he may be released on habeas corpus. The decision was not only mine, but that of Judge Robinson sitting with me."

The court stated further that he had been misrepresented by the papers in their publishing the cartoon, and released the Williams boys, when in fact they had been acquitted by a jury. "Time after time," said the court, "the newspapers published comments upon, and wrongful reports of, cases in this court, in total disregard of the penal laws of decency and right. This court administers law to the best of its ability and knowledge, and if there are errors, they are errors of judgment to which all courts are liable."

Judge Gear continued the matter until 11 o'clock in order to give Blitting time to prepare the necessary affidavits and the jury was excused until 2 o'clock. Blitting evidently didn't believe the matter of immediate importance, for it was 12 o'clock before he finally leisurely walked into court with the necessary papers, though Judge Gear had been impatiently waiting on the bench for nearly an hour.

Judge Robinson and Judge Humphreys appeared with Judge Gear upon the bench when the matter was called up for the second time at 12 o'clock. Blitting began to apologize for keeping the court waiting, when Gear interrupted, telling him to present his affidavit.

Mr. Blitting then began to read the affidavit reciting the trial of the first case against McCarthy, the conviction by a jury, and the subsequent action of Judge Gear in releasing him, on the ground that the crime of mayhem had no place in the Hawaiian statutes. The affidavit was based upon section 257 of the Penal Code of 1897. The affidavit closed with following specific charges:

"That on this 12th day of March, A. D. 1902, at Honolulu, Island of Oahu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, the said Pacific Commercial Advertiser, a newspaper printed, published and of general circulation within said Honolulu, the said Walter G. Smith, editor, and ——— its agents, owners, officers, servants and employees did make and publish for circulation, an insulting, contemptuous, contumelious, disrespectful cartoon or picture, intending and meaning thereby to throw disrespect upon the Honorable George D. Gear, one of the judges of said court, and the presiding judge at both of the trials hereinbefore named; and in said cartoon or picture intending to and attempting to represent the former action in a ludicrous and disrespectful manner of him the said Honorable George D. Gear in his official and judicial capacity, as well as to prejudice the case of said defendant in the minds of the public, and that by reason of said insulting, contemptuous, contumelious and disrespectful picture or cartoon, and intending to publish animadversions on the evidence or proceedings in a pending trial tending to prejudice the public respecting the same, and to obstruct and prevent the administration of justice, and by knowingly publishing an unfair report of the proceedings of the court, and maliciously inventing and publishing such report, tending to bring said court and jury, and the administration of justice into ridicule,

contempt, discredit and odium, did then and there and thereby commit a contempt of court."

"I will issue the order; the court will issue the order, returnable forthwith," said Judge Gear.

The matter was thought to be closed, when Judge Humphreys remarked: "As First Judge of the First Circuit, I was invited by Judge Gear to sit with him during the hearing of the matter pending, which I deem to be proper. This case affords a striking instance of the attitude of the attorney general and his deputies toward the judges of the United States Courts. If the attorney general or his employees were inspired by any sense of the honor, decency or proprieties of their positions, the attorney for the defendant would not be here in the capacity which he is compelled to take, owing to the attitude of the attorney general's department. The attitude of the attorney general and his employees has been one of hostility to the judges up to this time."

"Both judges have consented to sit with me," said Judge Gear, by way of explanation.

"I might say in justice to myself," said Deputy Attorney General Doukhitt, in response to the remarks of Judge Humphreys, "that I did not reach the court room this morning until twenty-five minutes before ten, and that Mr. Blitting immediately presented his motion. He took the bull by the horns, and appearing for the defendant, made the application. I am here as an attorney employed by the attorney general's department to try criminal cases."

Again Humphreys broke the silence. "The statement of the deputy attorney general in this matter is plausible," said he, "but it does not bear upon the continued attacks by malicious and unscrupulous persons in this Territory upon the courts. The attorney general should be bound by principles of honor and decency, and loyalty to the court; but in reference to none of these principles has he shown any appreciation."

George Davis had entered the court room in the mean time, and started out as usual with a long and violent tirade, when Judge Humphreys again interrupted: "These proceedings won't be necessary whenever we get judges appointed by the governor."

Then Davis was allowed to thrash about at will, and said that no words, even those of Judge Humphreys, could be too strong to condemn the dastardly attempt to bring the administration of justice in this Territory into disrepute, and to condemn the cowardly and dastardly course of the attorney general. These attacks, he said, must cease, and he was willing to do all he could to uphold the court. Then Judge Gear remarked that he was in a measure concerned in the case, and thought it proper that the court should be represented by counsel, so he appointed George Davis to appear in his behalf. Adjournment was taken at this time to 3 o'clock.

When court was convened again at 3 o'clock the room was crowded with attorneys and spectators. The three judges again took seats upon the bench and Judge Gear inquired if any return had been made upon the citation. Mr. Blitting replied that he had given the papers to Deputy Sheriff Chillingworth to serve, and he knew nothing further of the matter. The clerk here appeared with the papers, and they were handed to Mr. Davis, who read from the return that no service had been made upon Walter G. Smith, as he could not be found up to the appointed hour, though due and diligent search had been made. Davis then asked that the return be amended, and the matter go over to this morning, though he said McGurn had told him that he had arrived at the Advertiser office ten minutes after Mr. Smith had left. He suggested that Mr. Smith must have known of the citation, and it was his duty to appear anyway, service or no service, and he thought that a bench warrant should be issued for his arrest.

W. O. Smith came forward and said that he appeared in the case. Gear wanted to know if he had not consulted Editor Smith during the afternoon, to which Mr. Smith replied in the negative, saying that he had been retained by the corporation. Mr. Andrews said that he also appeared, and would like an extension of time, in order to make a proper return, but he had so far been unable to see a copy of the citation.

Judge Gear had been presiding up to this time, but here Humphreys again took the reins in his own hands, and remarked: "It is all nonsense to talk about not having time. You know what your paper is publishing, and when an article of this kind appears, should be ready to answer for contempt. It does not appear to me that he can appear by attorneys until he purges himself of contempt."

"We certainly have a right to appear in court upon the question as to whether or not this is contempt," replied Mr. Andrews.

Mr. W. O. Smith replied that he was certain there was no intention on the part of Mr. Smith to evade the summons. Then Bailiff Hopkins was sent to telephone the Advertiser office as to Mr. Smith's whereabouts, and reported that he was not expected to return until 5 o'clock. Judge Gear thereupon resumed duty, and adjourned court until this morning at 9 o'clock, the citation being made returnable at that hour.

In the meantime, as has been his afternoon custom, of late, Mr. Smith was up the Manoa valley looking after a house he is having built.

SAME POWER AS DISTRICT COURTS

Judge Robinson yesterday overruled the motion of defendant in the case of Charles Malala, charged with assault, to quash the indictment on the ground that the grand jury had no power to indict for misdemeanor. The court held that the district judges have the same power as the district magistrate, and consequently the grand jury had a right to indict. The jury, however, returned a verdict of acquittal, after coming into court once and reporting a disagreement. Further instructions were asked as to assault, and the court instructed that an attempt at rape was not necessarily assault.

Malala still has three charges hanging over him.

SUPREME COURT.

In Supreme Court yesterday the fol-

lowing cases were heard: Territory vs. Joseph Castro, E. Armitage vs. E. F. Bishop, administrator, and Mary S. Klean vs. Kaohi.

COURT NOTES.

An amendment to the Supreme Court rule regarding transcripts of evidence was made yesterday, requiring that note of the date of furnishing transcript be noted. The transcript need not be furnished by the stenographer until he is paid for it, and must be filed ten days before the hearing of a case.

Herbert G. Middleditch has made application for license to practice law in the district courts.

The annual accounts of W. O. Smith, trustee of the estate of Achi K. Akau, were filed yesterday. The receipts were \$1,100; disbursements, \$1,061.75. The annual accounts of W. O. Smith, guardian of the estate of Bill Bray, a minor, were filed yesterday. A balance on hand for the year is shown to be \$250.50.

The inventory of the estate of Maria L. Hoffman was filed yesterday, showing personal property amounting to \$41,011.30, and real estate valued at \$19,000.

Judge Humphreys yesterday filed a written decision denying the petition of Gladys Fisher, a minor, for permission to assign her interest in the life insurance policies of her father, Will E. Fisher, to him.

J. Fukushima has sued Morihiro for \$2,000 damages for malicious prosecution.

The Ralston Iron Works has given notice of materialman's lien for \$955.91, against J. Mendonca and K. A. A. Iron Fence and Mechanical Company.

Judge Gear yesterday cancelled the \$5,000 bond given by J. W. Hall, and the defendant was arrested and brought into court. The bond was allowed to stand until today, and Hall ordered to get a new surety.

The following material and labor liens were filed against the Kona Sugar Company yesterday: A. Esser, \$155; Joseph Kasek, \$474; M. G. Norris, \$44.35; Charles Cowan, \$117.50; S. J. Stewart, \$383; Frank Guard, \$233.30; C. J. Ottman, \$233.50; C. D. Ray, \$285; Thomas McMillan, \$173.50; J. Phillips, \$375.

The annual accounts of the trustees of the B. P. Bishop Museum were filed yesterday for the year ending October 12, 1901, showing receipts of \$229,092.27, and expenditures of \$198,400.19, leaving a balance of \$30,692.08. The inventory shows more of the taboos bonds, in Oahu Sugar Company—\$50,000. The entire personal property and real estate is valued at \$409,156.76.

FULLER CASE BEFORE ESTEE

Judge Estee heard the libel of the A. J. Fuller yesterday and the trial is to be continued this morning at 10:30 o'clock. The Federal court room was crowded with the plaintiffs, some thirteen or fourteen sailors of the ship, who complained that they had been put on short rations for 40 days, and demanded \$20 apiece from the skipper. The testimony was of an extremely interesting nature, the sailor-plaintiffs all coinciding in the story of short rations. They claimed that they had been kept with little food for the greater part of the voyage, and one sailor said that 16 men had nothing for four days excepting two buckets of water.

Shipping Commissioner Boyd was also a witness for the plaintiffs, but his story was rather an aid to the defense, he stating that the skipper was willing to arbitrate the question, while the men refused to do so, until they knew what the decision was to be.

Captain Haskell denied in toto all the accusations of the sailors. The plaintiffs' attorney asked if what the sailors had testified to was true, to which Haskell replied dramatically, rising in his seat and raising his right hand: "So help me God, those stories are not true." The captain stated that six of the men were put in irons, and on rations of bread and water for mutiny at Sydney, and said that the sole cause for the complaint of the men was the fact that four Italians had been shipped on the crew.

He said further that the voyage was one which ordinarily takes but 55 days, while this one because of light winds, occupied 81 days, and he admitted being short of rations one day. Additional supplies had been taken from the bark Kaulani, but up to that time there had been not enough to eat. During the two weeks the crew was short of the rations prescribed by the regulations, they had been supplied with other food instead.

The captain was still on the stand when an adjournment was taken to this morning.

TRANSPORT WARREN STILL IN PORT

The transport Warren did not depart yesterday as given out from the ship on Tuesday night. It is reported that she will surely set away today, but nothing definite could be ascertained.

It was learned, however, from reliable sources that the Warren is not likely to sail for several days yet, even if she ever does get away from this port at all. While nothing in the shape of confirmation could be obtained yesterday, it was very generally rumored along the waterfront that the Honolulu Iron Works, which had been engaged to repair the Warren's boilers, had, after a thorough inspection, decided to have nothing more to do with the job. It is said that Catton, Neill & Co. were then engaged, and are putting angle-irons into the damaged boilers.

It is understood that two barrels of salt were found in one of the transport's boilers. This must either have been put in intentionally, or its presence is due to gross neglect on the part of the engineer's department of the vessel.

All the troops slept on board the Warren last night.

Condor Boom Found.

VICTORIA, B. C., March 4.—With the return of the steamer Queen City, arriving tonight after a rough passage from the west coast, more evidence of the loss of the Condor were received. The boom of the lost warship has drifted ashore at Long Beach near Clebut. This boom, which is of hardwood, is stamped with the name of the warship, and is positively from her.

The City of Peking brought 450 Japanese.

STORMS ARE WIDESPREAD

Heavy Losses From Floods and Snow.

NEW YORK, March 5.—Another snowstorm which threatens to do much damage started at 4 o'clock this morning, and at 8 o'clock two inches had fallen. The snow was wet and heavy and caused much inconvenience and considerable delay to traffic on elevated and surface lines. On the river the weather was so thick that ferryboats were unable to run at morning half-speed. The snow was accompanied by a moderate wind. The thermometer stood at 29 degrees at 9 a. m.

Telegraphic service was further demoralized by the storm. The Western Union Company lost twenty out of thirty wires between New York and Philadelphia, and ten wires south of Philadelphia, between 9 and 11 o'clock. The company reported that it was losing wires in all directions on account of the heavy snow which in some localities was followed by sleet. Between Easton and Williamsport, Pa., twenty miles of Western Union poles are down. Up to 11:30 there was no sign of improvement in the weather, the snow continuing to fall heavily.

The train service on the New York Central Railroad, which was disorganized by the floods, was further impeded by the snow. The trains from the west and north are in bad shape. No attempt was made to run the Adirondack express. Of the Chicago express, due at 10 a. m., no report had been received up to 11 o'clock. It was stalled somewhere along the line, with no means of reporting its whereabouts or condition.

PARKERSBURG, W. Va., March 5.—The central and western portions of the State are covered this morning with a heavy snowfall. It is still snowing. If the snow should melt quickly there would be cause for alarm among residents of the lowlands in the Ohio Valley.

HUNTINGTON, W. Va., March 5.—A snowstorm has been raging in southern West Virginia for twenty hours. In the Ohio Valley snow is fourteen inches deep. In all mountainous districts it is twenty to thirty inches. All street car traffic is suspended in Ohio river towns. Railway traffic is greatly impeded.

WASHINGTON, March 5.—A combined storm of wind, snow and sleet prevailed here last night and part of today, and threatened for a time to assume serious proportions. Over an inch of snow and rain was precipitated. The forecast officials say that the storm is not sufficient to bring the Potomac again to the flood level.

YORK, Pa., March 5.—The heaviest snowstorm of the season set in here last night, and the ground is now covered to a depth of twelve inches. All trains on the Frederick division of the Pennsylvania Railroad have been annulled. Two trains were stalled on the Columbia bridge this morning. Between Hanover, Pa., and Frederick, Md., the entire road is practically drifted shut.

PITTSBURGH, Pa., March 5.—The heaviest snowstorm of the winter set in about midnight, and at noon today it is still snowing. The snow is now seven inches deep, and the indications are for continued snow today and tomorrow. Street car traffic is almost a standstill in both Pittsburgh and Allegheny, while the cars to and from the suburbs are making but few trips. The railroads are also suffering to some extent. The local telephone wires are in bad shape.

CHICAGO, Feb. 28.—Torrential rains, washouts, tornadoes in the southeast; floods, breaking of dams and ice gorges in Pennsylvania; copious and devastating rains in the Middle Atlantic States; snow blizzards in Minnesota and the Dakotas, were the reports that came in over the crippled telegraph lines. Reports of death and disaster from the South are widespread.

TELLURIDE, Col., Feb. 28.—Fourteen dead; as many more injured, and a score missing, is the result of a series of snowslides near here.

ATLANTA, Ga., Feb. 28.—Yesterday's storm spread disaster through Georgia, Alabama, Tennessee, Virginia, North and South Carolina and Florida. No trains have passed through on the Seaboard north for Atlanta in twenty-four hours. Several people were killed in a cyclone. Railroad tracks at Jackson are five feet under water.

SAN FRANCISCO, March 2.—This city was practically cut off from the rest of the world last night, the storm playing havoc with telegraph and telephone wires.

PATERSON, N. J., March 2.—This city, recently swept by fire, is overwhelmed by flood. Hundreds of families have been made homeless by the overflow of the Passaic. The city is many feet under water, and one life is thus far lost.

ALLEGHENY, Pa., March 2.—The flood waters have receded after submerging much of this city, and traffic is being resumed. The damage to the city is estimated at \$1,250,000.

WHEELING, W. Va., March 2.—Wheeling is tonight in the grasp of the worst flood it has experienced since 1854. The maximum was reached to-night, 42 feet 2 inches. In all, 29,000 men are idle, though mules being used to work the boats.

NEW YORK, March 2.—Not a western train crossed the Grand Central station today. Not for many years have the mails been so delayed as during the last three days.

A PRINTER GREATLY SURPRISED

"I never was so much surprised in my life, as I was with the results of using Chamberlain's Pain Balm," says Henry T. Crook, president of the Asheville (N. C.) U. S. A. Gazette. "I contracted a severe case of rheumatism early last winter by getting my feet wet. I tried several things for it without benefit. One day while looking over the Gazette, I noticed that Pain Balm was positively guaranteed to cure rheumatism, so I bought a bottle of it, and before using two-thirds of it my rheumatism had taken its flight, and I had not had a rheumatic pain since." Sold by all druggists and dealers. Benson, Smith & Co., Ltd., agents for H. I.

Capt. J. F. Jones will it is said, embark in the fishing industry in the near future.



Complete External and Internal Treatment for Every Humour, Consisting of CUTICURA SOAP, to cleanse the skin of crusts and scales and soften the thickened cuticle, CUTICURA Ointment, to instantly allay itching, inflammation, and irritation, and soothe and heal, and CUTICURA RESOLVENT, to cool and cleanse the blood. A SINGLE SET is often sufficient to cure torturing, disfiguring humours, with loss of hair, when all else fails. Ask depot: R. Towns & Co., Sydney, N. S. W. So. African depot: LYNCH LITH, Cape Town. All about the Skin, Hands, and Hair. Free. PORTER DRUG AND CHEM. CO., Sole Props., Boston, U. S. A.

Pacific Mail Steamship Co.

Occidental & Oriental S.S. Co. and Toyo Kisen Kaisha.

Steamers of the above companies will call at Honolulu and leave this port on or about the dates below mentioned:

FOR CHINA AND JAPAN.	FOR SAN FRANCISCO.
PERU MARCH 12	PEKING MARCH 13
CELESTINE MARCH 19	GALIC MARCH 20
AMERICA MARU MARCH 26	HONGKONG MARU MARCH 28
PEKING APRIL 6	CHINA APRIL 8
GALIC APRIL 12	DORIC APRIL 15
HONGKONG MARU APRIL 22	NIPPON MARU APRIL 25
CHINA APRIL 30	PEKING MAY 2
DORIC MAY 8	

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Censure for Senatorial Sluggers.

WASHINGTON, February 27.—The subcommittee of the Committee on Privileges and Elections, which was appointed yesterday to formulate a proposition for the proper punishment of Senators Tillman and McLaure for their conduct and to limit the punishment to censure. There are reasons which led the republican members of the subcommittee to agree to a resolution of censure.

